United Nations A/70/685/Add.1

General Assembly

Distr.: General
2 February 2016

Original: English

Seventieth session
Agenda item 140
Joint Inspection Unit

Use of non-staff personnel and related contractual modalities in the United Nations system organizations

Note by the Secretary-General

Addendum

The Secretary-General has the honour to transmit to the members of the General Assembly his comments and those of the United Nations System Chief Executives Board for Coordination on the report of the Joint Inspection Unit entitled "Use of non-staff personnel and related contractual modalities in the United Nations system organizations" (see A/70/685).

16-00670 (E) 050216

Please recycle

Summary

In its report entitled "Use of non-staff personnel and related contractual modalities in the United Nations system organizations" (see A/70/685), the Joint Inspection Unit assessed the use of non-staff personnel and analysed the policies, regulations, contractual practices and associated managerial processes that United Nations system organizations use for such personnel.

The present note reflects the views of the Secretary-General and organizations of the United Nations system on the recommendations provided in the report. The views have been consolidated on the basis of inputs provided by member organizations of the United Nations System Chief Executives Board for Coordination, which welcomed the report and supported some of its conclusions.

I. Introduction

1. In its report entitled "Use of non-staff personnel and related contractual modalities in the United Nations system organizations" (see A/70/685), the Joint Inspection Unit assessed the use of non-staff personnel, including an analysis of the policies, regulations, contractual practices and associated managerial processes that United Nations system organizations use for such personnel.

II. General comments

2. United Nations system organizations welcomed the report, noting that it provided critical insights into the use of consultants, along with the possible risks associated with the use of contracting and staffing in that regard. With respect to the definition of "non-staff", organizations noted that the term was used to refer to individuals working with the United Nations who did not hold a staff contract and, as such, was too broad to be defined in a meaningful way. Instead, the specific contractual modality defined the various categories of such personnel, including consultants, gratis personnel, officials other than Secretariat officials, military observers, United Nations Volunteers, meeting participants, government-provided personnel and commercial contractors. Each category had its own definition and terms and conditions of service.

3. While organizations expressed appreciation for the Unit's analysis of a very complex issue, they affirmed that the report's overall value would have increased if there had been a more thorough discussion of the reasons for and benefits of the engagement of non-staff personnel, along with further highlighting of control measures that could ensure that delegated hiring managers used non-staff contracts appropriately. Organizations noted that the decentralized use of non-staff contracts allowed for a greater level of agility and flexibility in their staffing and promoted cost-efficiency and effectiveness of their activities — objectives that were in line with the Unit's analysis.

4. Staffing agility was particularly critical for organizations that relied on contingent staff to provide the surge capacity that permitted a rapid response to global demands, such as humanitarian emergencies. From the perspective of agencies that required such flexibility, it was of primary importance that organizations that engaged non-staff employees seek to provide appropriate conditions of service, including through the provision of subsidized health, life and disability insurance schemes; entitlement to annual, sick and maternity leave whenever possible; pension schemes where possible; and eligibility for United Nations travel documents as appropriate.

5. Some organizations, particularly those with high voluntary funding models, concurred with the statement in paragraph 34 of the report that the unpredictability of funding further restricted the ability of organizations to make long-term staffing commitments. In addition, some organizations suggested that, should this topic be explored further, it also include a consideration of whether organizations could reasonably expect of non-staff the level of commitment to the Charter that they expected of their staff, if in fact the organizations treated the two groups differently.

6. Notwithstanding those comments, organizations found that the report included important points of reflection and highlighted practices worth considering.

III. Specific comments on recommendations

Recommendation 1

The executive heads of the United Nations system organizations should revise their non-staff policies, including the definition of non-staff and the criteria for the use of non-staff personnel, by using the employment relationship principle in accordance with relevant labour recommendations of the International Labour Organization.

7. While organizations generally supported the principles behind recommendation 1, they also pointed out that the application of international labour principles was a matter for legislative bodies to determine, not the executive head. Furthermore, many organizations noted that policies currently in place already supported the regulation of the "employment relationship", and suggested that any further analysis would only add additional cost without significant benefit.

Recommendation 2

The legislative/governing bodies of the United Nations system organizations should systematically exercise their oversight functions on the use of non-staff personnel through regular reviews of non-staff personnel information/data provided by the respective executive heads.

8. Noting that recommendation 2 was directed at governing bodies, organizations pointed out that the regular reporting of staffing modalities to governing bodies was a common practice. They also noted that, although oversight was a function of governing bodies, the implementation and the monitoring of the use of contractual modalities remained under the responsibility of the executive heads of agencies.

Recommendation 3

The executive heads of the United Nations system organizations should review the use of non-staff personnel with a view to identifying long-serving non-staff personnel under a de facto employment relationship and establish a plan (short- to medium-term) to terminate the inappropriate prolonged use of non-staff personnel. The plan, including resources required, should be presented to the legislative/governing bodies for endorsement and provision of the necessary financial support.

9. Organizations generally accepted the principle behind recommendation 3, and acknowledged the challenges and potential risks posed by individuals serving over a long period of time under non-staff contractual modalities. Many organizations indicated that they were addressing the issues involved, such as including mandatory breaks in service, limiting the duration of consultant contracts in their policies and, when possible, creating positions instead of using consultancy contracts. However, organizations also indicated that they would face challenges in the short to medium term in undertaking an exercise to obtain the necessary financial resources from their governing bodies or donors, especially because, in many cases, a majority of non-staff personnel were recruited against project funds at non-headquarters duty stations.

Recommendation 4

The executive heads of the United Nations system organizations should strengthen their internal monitoring, control and oversight of the use of non-staff personnel, through the sustained application of effective internal control mechanisms, systematic corporate monitoring and information/data collection, analysis and audits. They should ensure that a central department/unit at the corporate level is held responsible for global monitoring, analysis and reporting on the issue.

10. Organizations supported recommendation 4, noting that information systems were being continually enhanced in a way that allowed for effective monitoring and control of non-staff human resources.

Recommendation 5

The executive heads of the United Nations system organizations should ensure periodic analytical reporting both internally (to senior management) and externally (to the respective governing body) on the use of non-staff personnel in their organizations. Such reports should include detailed data and analysis on the use of non-staff, including the number of non-staff and associated expenditure, their weight in the total workforce, the breakdown of contractual modalities and the areas and locations used, the developing trends and the potential risks and corresponding measures.

11. Organizations supported recommendation 5, with many noting that detailed reporting mechanisms similar to those presented in the recommendation either already existed or were available as needed for management reviews. Organizations pointed out that, in general, the global architecture of the contractual framework was under the purview of legislative bodies and that reports needed to carry out that function were available, whereas the implementation and monitoring of the use of contractual modalities remained the responsibility of the executive heads.

Recommendation 6

The executive heads of the United Nations system organizations should ensure that updated and consolidated practical guidelines on the use of non-staff personnel are in place to guide managers involved in decision-making on the use of non-staff contractual modalities.

12. Organizations supported recommendation 6, agreeing on the importance of guidelines and training to ensure that managers could make good decisions regarding the use of non-staff contracting modalities. However, they also stressed that, in practice, and especially in a highly decentralized environment, increased guidance and education on the use of such contractual modalities could succeed only if control and compliance monitoring processes were in place.

Recommendation 7

The executive heads of the United Nations system organizations should ensure that individuals working for the organization under third-party/outsourcing contracts have decent working conditions, including a fair salary and social benefits and entitlements.

13. While organizations of the United Nations system supported this recommendation in principle to the extent that they could influence working conditions, they noted that their ability to influence salaries, social benefits and entitlements to third parties could be somewhat limited. Many organizations noted that the current general conditions for contracts, such as the United Nations Supplier Code of Conduct, required that contractors comply with all local laws and regulations, which included labour laws and minimum-wage requirements.

Recommendation 8

The executive heads of the United Nations system organizations should ensure that the gender balance policy and related measures include non-staff personnel, including United Nations Volunteers (UNVs). Gender balance in non-staff personnel recruitment should be promoted and monitored as part of the overall gender equality policy.

14. Organizations strongly supported recommendation 8, noting that gender balance and geographic diversity remained fundamental principles for the engagement of both staff and non-staff.

Recommendation 9

The executive heads of the United Nations system organizations should allow long-serving non-staff (including UNVs) to apply as internal candidates for vacant staff positions, with a view to ensuring fairness and providing a measure to reduce long-serving non-staff in the organizations.

15. While some organizations noted that current policies did not distinguish between internal and external candidates for positions (i.e., all vacancies were available to anyone), and therefore technically already complied with the recommendation, other organizations expressed reservations with regard to considering long-term non-staff contract holders as internal candidates. In one case, an organization noted that this could be tantamount to recognizing that they were de facto staff members, when in fact they were not. In some cases, organizations noted that the governing bodies had imposed certain employment restrictions on non-staff personnel, by, for example, requiring a break of a certain duration before applying for a vacancy, and that this would prevent the implementation of the recommendation. It should also be noted that for those organizations subject to the Staff Rules of the United Nations, the term "internal candidate", which was defined in a specific way, excluding non-staff personnel, would have to be modified.

Recommendation 10

The executive heads of the United Nations system organizations should ensure that there is a clear, fair and rational mechanism for the determination and adjustment of remuneration levels of non-staff personnel, particularly in respect of long-serving non-staff.

16. Organizations accepted recommendation 10, with many indicating that processes for determining remuneration levels of non-staff personnel generally existed. Some organizations pointed out that these processes might not include the creation of a predetermined remuneration, which might not yield the "best value for

money" and which could limit and constrain the full and effective application of the competitive selection processes.

Recommendation 11

The executive heads of the United Nations system organizations should ensure that long-serving non-staff personnel (including UNVs) have access to appropriate formal internal justice mechanisms. To that end, the executive heads should consider allowing them access to existing mechanisms or establish another practical system for their use.

17. Organizations did not object to making "formal internal justice mechanisms" available to long-serving non-staff. Some noted that for certain categories of non-staff such mechanisms existed; for example, the United Nations Commission on International Trade Law, as an ad hoc arbitration mechanism available to non-staff personnel, was considered to be an appropriate and internationally recognized means of dispute resolution that fulfilled the obligation of the United Nations under international law to provide appropriate legal recourse for disputes of a civil law nature. However, while organizations emphasized that allowing non-staff access to the existing process for the administration of justice would likely increase the system's complexity and costs, they noted that the responsibility for this issue rested with governing bodies. Organizations noted that a proposal to the General Assembly had been put forth during its sixty-seventh session (see A/67/265 and Corr.1, annex IV) and that in its resolution 67/241, the Assembly had noted the importance of ensuring that all categories of personnel had access to recourse mechanisms to resolve disputes (para. 50) and taken note of the proposed expedited arbitration procedures for consultants and individual contractors developed by the Secretary-General contained in annex IV to his report on administration of justice at the United Nations, and decided to remain seized of the matter (para. 51). Organizations believed that this recommendation should be addressed to the legislative bodies, not the executive heads of the United Nations system organizations.

Recommendation 12

The executive heads of the United Nations system organizations, as a matter of priority, should ensure and formalize the access of non-staff personnel (including UNVs) to mediation, the ethics office, the office of the ombudsman and other informal conflict-resolution mechanisms, and ensure that such personnel have recourse to the policies on the prevention of harassment and whistle-blowing. Furthermore, non-staff should be informed of those rights.

18. Organizations generally supported recommendation 12, with many noting that the services offered by the mediation, ethics and ombudsman offices were usually available to non-staff on an informal basis. However, some organizations, particularly those with very large non-staff populations, pointed out that formalizing access to those services might require legislative body approval and would certainly require additional resources to accommodate a larger community.

Recommendation 13

The Secretary-General, as the Chair of the United Nations System Chief Executives Board for Coordination, should initiate the harmonization of non-staff policies and practices across the system, including the criteria/

principles in the use of non-staff, the preparation of a non-staff common contractual modality, remuneration methodology and entitlements. To that end, a working group can be established under the High-level Committee on Management.

19. Organizations indicated that they were prepared to contribute to United Nations system-wide efforts to harmonize non-staff policies and practices, although they noted that owing to the diverse mandates of United Nations system organizations, that would not be a straightforward exercise. They noted that there had been efforts to harmonize but that practical implementation often proved difficult, at times owing to financial constraints, such as the difficulty in offering the same benefits as a result of the unavailability of funds. It might not, therefore, be feasible to have one common contractual modality, remuneration methodology or set of entitlements for the use of non-staff that met the needs of all organizations. Nevertheless, the Human Resources Network of the Chief Executives Board for Coordination had, on a number of occasions, discussed the use of non-staff personnel and could continue efforts to harmonize business practices to the extent possible.